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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re C.G., a Person Coming Under the
Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHAEL B. et al.,

Defendants and Appellants.

B294409

(Los Angeles County
Super. Ct. No. CK75599B)

APPEAL from an order of the Superior Court of Los
Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant Michael B.

Nicole Williams, under appointment by the Court of
Appeal, for Defendant and Appellant S.G.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel and Sarah Vesecky, Deputy County
Counsel for Plaintiff and Respondent.

Michael B. (Father) appeals the juvenile court's order terminating his parental rights, urging that the court erred in finding that the beneficial parent relationship exception did not apply. He argues legal guardianship is a more appropriate permanent plan than adoption. S.G. (Mother) joins Father's appeal, but she does not challenge the court's findings against her or separately assert any other basis for our review. We conclude Father has not demonstrated the beneficial parent relationship exception applies, and adoption is favored over guardianship. Therefore, we affirm the order terminating parental rights as to both parents.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background and Prior History

The family consists of minor C.G. (born in January 2014), mother S.G., and father Michael B. Mother's older child, Branden R., was declared a dependent of the juvenile court due to Mother's substance abuse and failure to obtain medical treatment for a burn injury. Branden was placed in a legal guardianship in 2011 after Mother failed to reunify.

C.G. had also been the subject of prior dependency proceedings. In 2015, a petition was sustained charging Mother with endangering C.G.'s life when Mother attempted to strike a person with her vehicle while C.G. was in the passenger seat. Mother was arrested for assault with a deadly weapon and battery. The court awarded sole custody to Father and visitation to Mother before terminating its jurisdiction. That same year,

Mother was arrested for child endangerment and driving under the influence. She was placed in a psychiatric hold. Father signed an affidavit agreeing to comply with the custody order, which permitted Mother only monitored visits.

B. Detention Report

C.G. again came to the attention of DCFS in July 2016. The caller reported C.G. had an untreated sizable burn mark on the side of her stomach. Two-year-old C.G. had been with Mother at a nail salon when she spilled hot acrylic on herself. The caller believed Mother was using drugs. A social worker interviewed Mother, who confirmed the child's injury. She explained that although Father had custody of C.G., he worked a lot and left C.G. in Mother's care. Father was 20 years older than Mother and did not have an interest in parenting. Mother denied any criminal history or substance abuse. Though she agreed to submit to drug testing, Mother missed three drug tests in August.

Father allowed Mother regular unmonitored contact with C.G. in violation of court orders. He believed Mother was an appropriate caretaker. Mother did not participate in a court-ordered anger management class, nor complete a substance abuse program.

In November 2016, C.G. was removed from the parents' custody and placed with an aunt.

C. Juvenile Dependency Petition and Adjudication

DCFS filed a juvenile dependency petition on November 29, 2016 under Welfare and Institutions Code section 300,

subdivision (b)(1), which was subsequently amended.¹ The amended petition alleged Mother had an unresolved history of substance abuse and mental and emotional problems which rendered her incapable of providing regular care for C.G. The amended petition also alleged Father failed to protect C.G. and violated court orders by giving Mother unlimited access to C.G. to provide full-time unsupervised care, when Father knew or should have known of Mother's mental and emotional problems. Lastly, the amended petition alleged the parents had failed to obtain timely medical treatment for C.G.'s burn injury, which placed her at risk of serious physical harm.

At the January 2017 jurisdictional hearing, the court sustained the petition.

D. Ex Parte Removal and Disposition

DCFS filed a section 385 ex parte application in January 2017. The aunt had reported that Mother "kidnapped" C.G. during a visit. A relative returned C.G. to DCFS custody, but DCFS recommended removal from placement with the aunt. The court granted the petition, and C.G. was placed in a foster home.²

At the June 2017 disposition hearing, C.G. was declared a dependent of the court under section 300, subdivision (b). The

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

² The court granted the parents visitation. By May 2017, Father was "generally inconsistent" with visits and had missed three weeks in April. In June, Father was visiting "consistently." Mother was initially "very consistent" with visits, but later admitted struggling with depression, and reported some days she could not get out of bed.

court ordered reunification services for Father only, and monitored two-hour visits once a week for each parent.

E. Six-Month Status Review (December 2017)

In September 2017, C.G.'s caregiver requested a change of placement due to "concerning behaviors," including extended tantrums, inappropriate language, crying spells, hitting other children, urinating on herself, and hyperactivity. C.G. was moved to a new foster home with caregiver Ruth G.—her third placement in a year.

C.G.'s new placement was "a stable, supportive, and safe environment," and she was "well cared for." She was observed to be developmentally on-track, active, smart, and social. However, she continued showing concerning and "attention seeking" behaviors. She destroyed toys and threw objects, defecated in odd places, cursed to express herself, and demonstrated defiant and aggressive behavior at school. C.G. was working with a therapist to learn coping skills and healthy ways to express her emotions. Her caregiver Ruth was also learning strategies to regulate C.G.'s behavior.

Father was generally consistent with visits, and notified DCFS in advance when he was late or missed a visit. Father had a "healthy bond" with C.G. and was "very appropriate" with her. Mother was initially inconsistent with visits due to alleged housing appointments, mental health issues, and "weather conditions," but became more consistent over time. C.G. looked forward to and enjoyed her visits with both parents, but was still defiant and needed redirection. She showed negative changes in behavior following these visits.

Father made "minimal efforts" to complete court-ordered services, including parenting classes and individual counseling.

DCFS was “concerned that father is not committed to providing ongoing care for [C.G.] absent of DCFS, and mother.” Father expressed that “his work schedule (truck driver) and housing instability leaves him in a position where he is unable to care for [C.G.] at this time.” He also expressed that he was “not ready” to care for C.G. Father inquired about returning C.G. to Mother, despite knowing she had been denied reunification—demonstrating “a lack of clear understanding as to mother’s current mental capacity” and a “minimization as to the safety threats and risk that led to his daughter[']s removal.” While DCFS believed Father “loves [C.G.], and visits are appropriate,” it remained concerned about his willingness to “raise his daughter” and “provide lifelong care” for her.

F. 12-Month Status Review (May 2018)

C.G. continued to develop appropriately and now referred to Ruth as “grandma.” She had developed a close bond with another foster child, “Yaya,” who shared a room with her. C.G. continued to exhibit inappropriate behavior, but showed progress with coping skills, social skills, and following directions. Her teacher noted an improvement in C.G.’s behavior after moving to a smaller afternoon class.

C.G. continued to enjoy appropriate weekly visits with both parents. Father was consistent with a “majority” of his visits, though he was sometimes late or did not show up. He showed a “positive bond” with C.G., but struggled to appropriately discipline her. Mother was generally consistent with visits, but from January to April 2018, she could not be contacted while incarcerated for battery. During this time, C.G. asked about her mother “frequently,” urinated on herself in her sleep, and had

frequent nightmares and crying spells. She continued to show negative behaviors following visits with both parents.

Father did not participate in court-ordered services, despite the flexible accommodations available to suit his work schedule. He did not enroll in parenting classes or individual counseling, despite multiple referrals. Father had also been arrested and incarcerated for two weeks. He continued to suggest returning C.G. to Mother, and seemed “unwilling and incapable” of caring for her on his own. He believed Mother should be reunified with C.G., although there was no evidence Mother had addressed her mental health issues and drug abuse.

While C.G. wanted to see her parents, she now expressed a desire to “‘stay with grandma’” and “Yaya.” Ruth was willing to provide a permanent placement for C.G. The court terminated reunification services, setting the matter for a section 366.26 hearing, and directed DCFS to initiate an adoptive home study.

G. Section 366.26 Report

By September 2018, C.G.’s teacher noted a “huge transformation” in her behavior. In her smaller class, C.G. was better at complying with the classroom structure and rules, and the teacher could devote more attention to her. The therapist also observed improvements in C.G.’s behavior. However, C.G. continued to act out against Ruth after returning from visits with the parents. The therapist believed C.G. was “confused, missing her parents, and not understanding that the caregiver is not the reason why she cannot go home.” The therapist explained Ruth was there to “take care of her while her parents are getting themselves together.”

DCFS reported that from December 2017 to July 2018, Father visited once in December, twice in January, three times in

February, once in March, four times in April, twice in May, twice in June and once in July.³

Ruth was eager to adopt C.G. because her family had built a strong bond with her in the past year. They “adore[d] and love[d] [C.G.] very much” and wanted to provide a stable home environment for her. Ruth had adopted two children in the past, raising them from infancy until adulthood. When asked if she wanted to remain with Ruth, C.G. answered “Yes,” because “she takes good care of me and takes me to fun places.” DCFS recommended adoption as a permanent placement plan.

H. Status Review Report

Ruth continued to provide “outstanding” care. She participated in weekly therapy sessions with C.G., learning how to soothe C.G. when distressed and help her express her feelings in healthy ways. By November 2018, C.G. was appropriately engaging and playing with other children, including Ruth’s grandchildren, who visited daily. C.G. had adjusted well to school and was enjoying prekindergarten. The therapist planned to discuss adoption with C.G. in a child-friendly manner.

Between April and October 2018, Father visited C.G. four times in April, twice in May, twice in June, once in July, twice in August and once in October.⁴

³ From January to July 2018, Mother visited twice in January, twice in April, once in May, three times in June, and twice in July.

⁴ In the same time period, Mother visited twice in April, once in May, three times in June, twice in July, once in August, once in September, and once in October.

I. Section 366.26 Hearing

In November 2018, Father testified at the section 366.26 hearing regarding his visitation. He estimated he attended 90 percent of his weekly visits with C.G., which lasted an hour and a half. “[O]ne of the reasons” he missed visits was because of his work schedule. During visits, he brought C.G. food and they talked, played, and read together. She called him “daddy,” showed him affection, and once told him she wanted to go home to be with him. When necessary, Father would discipline her. At the end of visits, C.G. was sometimes understanding, and sometimes resistant to separate. Father also FaceTimed with C.G. twice a week and asked about her day.

C.G.’s counsel joined DCFS in requesting termination of parental rights, arguing that contrary to Father’s testimony, his visits had not been consistent. Father had only visited 12 times out of 32 possible visits since April 2018. Furthermore, there was no indication that Mother or Father had visited C.G.’s school, spoken to her therapist, or otherwise taken a parental role.

The court found that “[w]hile the parents have maintained at times regular and consistent visitation,” it was not clear that the contact, “to the extent it has been regular and consistent,” had created a parental relationship. The court later remarked that “there is some dispute as to how consistent” the visitation had been. But even if it was consistent, and even if it conferred a parental relationship, “it has not been shown that it . . . created a parental role and relationship to the extent that it outweighs the benefits of permanence in adoption.” The court declared C.G. adoptable and terminated parental rights, finding no exception to adoption. Custody was transferred to DCFS for adoptive planning and placement. The parents timely appealed.

DISCUSSION

Father contends the juvenile court erred in rejecting the parental relationship exception to adoption. Mother also appeals, joining in Father's arguments, but not challenging the court's findings against her or asserting any other basis for our review. We find no error in the court's ruling.

A. Governing Law and Standard of Review

At a section 366.26 hearing, the court may order one of three alternative plans: (1) adoption (necessitating the termination of parental rights); (2) guardianship; or (3) long-term foster care. (§ 366.26, subd. (c)(1), (c)(4)(A); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574.) "If the child is adoptable, there is a strong preference for adoption over the other alternatives." (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.) A parent seeking an alternative plan has the burden of showing that the termination of parental rights would be detrimental under one of the statutory exceptions. (*Ibid.*)

The parental relationship exception applies when a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "The first prong is quantitative and relatively straightforward, asking whether visitation occurred regularly and often." (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) "[T]he second prong involves a qualitative, more nuanced analysis, and . . . requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination." (*Id.* at p. 613.)

To establish a beneficial relationship, "the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he

or she occupies a parental role in the life of the child.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) In other words, the parent must be more than “‘a friendly visitor or friendly nonparent relative.’” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) Furthermore, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

“When determining whether the exception applies to bar termination of parental rights, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. However, if severing the existing parental relationship would deprive the child of ‘a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.] In other words, if an adoptable child will not suffer great detriment by terminating parental rights, the court must select adoption as the permanency plan. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

In reviewing a court’s denial of a statutory exception to adoption, we employ the substantial evidence or abuse of discretion standard, depending on the nature of the challenge. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621–622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315.) For factual determinations, such as whether visitation has been consistent and the existence of a parental relationship, we apply a

substantial evidence standard of review. (*In re K.P.*, at p. 622; *In re Bailey J.*, at p. 1314.) Because a court must exercise its discretion to determine whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption, we also apply an abuse of discretion standard of review. (*In re K.P.*, at p. 622; *In re Bailey J.*, at p. 1315.)

B. No Error In Denial of Parental Relationship Exception

1. No Consistent Visitation

“‘Regular visitation exists where the parents visit consistently and to the extent permitted by court orders.’” (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 613.) “‘Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption.’” (*Id.* at p. 614; see *In re J.C.*, *supra*, 226 Cal.App.4th at p. 531 [consistency of visitation was “disputed” where there were “periods of time when [Mother] failed to regularly visit”].) Father argues that the court below “expressly found Father maintained regular contact and visitation with [C.G.]”⁵ Father’s contention is belied by the record. At the section 366.26 hearing, the court expressly found that the consistency of Father’s visitation was in “dispute,” and the parents had maintained regular contact with C.G. “at times.”

⁵ Father references the court’s minute order, which states that “parent has maintained regular visitation with the child and has not established a bond with the child.” This appears to be an error, given the court’s remarks at the section 366.26 hearing and its use of the conjunctive “and.” We make reasonable inferences to uphold the court’s orders, and resolve any conflicts presumed clerical in nature in favor of the reporter’s transcript. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.)

Furthermore, Father did not take full advantage of the visitation available to him. Though the court had permitted Father weekly visits with C.G. in the year preceding the section 366.26 hearing, the record indicates that Father visited C.G. only 19 times. His visits were usually one and a half hours, though the court had ordered two-hour visits. Sometimes, Father was late by 30 minutes or missed visits due to work. Father admitted he missed more visits in the months leading up to the section 366.26 hearing. In September 2018, he failed to visit C.G. at all. Though Father had frequent contact with C.G., his visits were neither weekly nor regular. On this record, we find substantial evidence to support the court's conclusion that Father was not entirely consistent with visits.

2. No Beneficial Parent-Child Relationship

Even assuming Father established consistent visitation, the juvenile court properly concluded that Father did not establish a strong parental relationship that outweighed the benefits of adoption. "The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Father's relationship with C.G. was arguably not parental in nature. Father was unwilling to bear the daily burdens and responsibilities of parenting, and was eager to delegate those duties to Mother even when he had sole custody of C.G. Father saw C.G., on average, twice a month, and nothing about their visits suggests he was more than a friendly, frequent babysitter. There was no evidence Father was communicating with C.G.'s

teachers and therapist, or inquiring about her educational and emotional needs. Father demonstrated a disregard for C.G.'s safety and a lack of sound judgment when he insisted Mother was a suitable caretaker and repeatedly left C.G. in her care. Indeed, Father acknowledges he is not in a position to provide full-time care for C.G., and he does not seek custody of her by this appeal. We find substantial evidence to challenge the existence of a parental relationship.

However, even if we recognized a parental relationship, the court properly concluded it was not compelling or substantial enough to deny C.G. the security of adoption. Although C.G. had an emotional attachment to her parents and was confused by her separation from them, any benefit arising from this parental relationship did not outweigh the importance of preserving the only stable home environment C.G. had known. "Even when a child loves his or her parents and desires continued contact with them, the court may nonetheless terminate parental rights if doing so is in the child's best interests. (§ 366.26, subd. (h)(1).)" (*In re Caden C.* (2019) 34 Cal.App.5th 87, 105.) The relevant question is whether the parental bond "was such a positive influence . . . that an uncertain future is an acceptable price to pay for maintaining it." (*Id.* at p. 113.) C.G. became a dependent of the court at age one, and again at age two, due to her parents' failure to protect her. By the time she was three, C.G. had been placed with an aunt and two foster homes within the same year. Now Father seeks to prevent adoption, but he cannot assume daily responsibility for C.G., and there is no indication he would not return C.G. to Mother when he is away for work. We find no abuse of discretion in the court's determination that the

beneficial parent relationship exception did not apply, and adoption was in C.G.'s best interest.

Father's persistent failure to comply with his case plan, despite multiple referrals and advisements by the court, also undermines the existence of a beneficial parent relationship. "[I]n cases where application of the beneficial relationship exception has been found or upheld, the parents were actively involved in maintaining their sobriety or complying substantially with their case plan." (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 112.) Although Father relies on *In re E.T.* and *In re Amber M.*, these cases are distinguishable because of those parents' exemplary compliance with their case plan or participation in treatment. (See *In re E.T.* (2018) 31 Cal.App.5th 68, 78 [mother voluntarily sought drug treatment following relapse, arranged appropriate childcare, and "did all she was asked to do and more"]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 690 ["Mother visited as often as she was allowed" and "did virtually all that was asked of her to regain custody"].) In contrast, Father's indifference to court-ordered services such as counseling and parenting classes indicates he had little interest in being a parent.

Finally, we consider that C.G. was thriving under the care of Ruth, with whom she had developed a strong bond. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [noting child was "bonded to her foster family and would suffer if she were disrupted"].) The benefits of being in a secure and structured environment under the attention of a loving caregiver were observable, even after one year. C.G. was adjusting well to school and enjoying her classes; she had developed meaningful relationships with other children, learned valuable coping skills

during therapy, and her behavior had greatly improved. Although she missed her parents and clearly had affection for them, by the time of the section 366.26 hearing, C.G. expressed a desire to remain with her new adoptive family and recognized Ruth took good care of her.⁶ In light of C.G.'s troubling dependency history and the risk of harm still posed if she were returned to Father's care, the juvenile court was entitled to conclude that the stability and permanence of her new home outweighed any potential benefits of a relationship with Father.

C. Legal Guardianship Is Disfavored

Father argues that guardianship by Ruth would preserve his beneficial parent relationship with C.G.. "The Legislature has decreed, however, that guardianship is not in the best interests of children who cannot be returned to their parents. . . . In decreeing adoption to be the preferred permanent plan, the Legislature recognized that, 'Although guardianship may be a more stable solution than foster care, it is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.' [Citation.]" (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) Furthermore, "guardianship is only the

⁶ Father contends that "[C.G.]'s wishes as to a permanent plan were not presented to the court, and no evidence was provided to detail why such information was precluded." A "statement from the child concerning placement and the adoption" is not necessary when "the child's age or physical, emotional, or other condition precludes his or her meaningful response." (§ 366.21, subd. (i)(1)(E).) Nevertheless, DCFS inquired whether C.G. wished to remain with Ruth, to which she unequivocally answered, "Yes." We are satisfied that DCFS secured an adequate statement from four-year-old C.G. (See *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 687.)

best possible permanent plan for children in circumstances where the exceptions to terminating parental rights in section 366.26, subdivision (c)(1) apply.” (*Id.* at p. 1420.) Because we have already determined that Father’s relationship with C.G. did not place him within these exceptions, “it necessarily follows that the juvenile court correctly determined that adoption was the appropriate permanent plan” for her. (*Ibid.*)

DISPOSITION

The juvenile court’s order terminating parental rights is affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.